BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
ASHLAND TEACHERS' FEDERATION LOCAL #1275, AFT, AFL-CIO	Case 73 No. 46914 MA-7104
and	
BOARD OF EDUCATION, SCHOOL DISTRICT OF ASHLAND	

Appearances:
William Kalin, Staff Representative, Wisconsin Federation of Teachers, AFT, AFL-CIO, Route 1, Box 469K, South Range, WI 54874, appearing on behalf of Ashland Teachers' Federation, Local #1275.
Kathryn J. Prenn, Attorney at Law, Weld, Riley, Prenn & Ricci, 715 S. Barstow St.,

ARBITRATION AWARD

Ashland Teachers' Federation Local #1275, AFT, AFL-CIO (hereinafter Union) and the Board of Education, School District of Ashland (hereinafter District or Employer) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for appeal of a grievance to the Wisconsin Employment Relations Commission (hereinafter Commission) for arbitration. On January 28, 1982, the Union filed a request with the Commission to initiate grievance arbitration. Following concurrence in said request by the Employer, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing was held on June 2, 1992, in Superior, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs and waived the filing of reply briefs, which process was completed on August 5, 1992. Full consideration has been given the evidence and arguments of the parties in reaching this decision.

Statement of Facts

The basic facts are not in dispute. Prior to 1991, a meeting for the entire high school faculty was held once a month from 3:30 to 4:00 p.m. In March 1991, the high school principal began holding small faculty meetings in lieu of the large faculty meetings on an alternate month basis. The small group meetings were scheduled during the student day; teachers attended a small group

meeting during their non-teaching time. The Union was not consulted about this change. The Union did not request to negotiate the change nor did any negotiations about said change occur between the parties.

On October 11, 1991, the Union filed a grievance objecting to the small group meeting format. The Employer denied the grievance. The Union processed the grievance through the contractual procedure. The grievance is properly before this Arbitrator.

Pertinent Contract Language

ARTICLE III - WORKING CONDITIONS

. . .

3.7.2 The school day at the middle school-senior high school levels shall be from 8:00 A.M. to 4:00 P.M.

. . .

3.7.6 The maximum teaching load at the secondary level shall be five (5) contact periods based on seven (7) period day. . . .A contact period shall be defined as a period assigned for instruction and/or supervision of one or more students, but shall not included home room assignments or work assigned pursuant to Section 3.7.7.

3.7.7 Teachers at the secondary level may be assigned ninety (90) hours of tutorial extra duty work, study hall and one (1) hour at the administrative discretion. This does not include home room assignments.

. . .

3.8.4 Teachers shall be permitted to leave their schools during their lunch periods or preparation periods for any reasons (sic). The office of the school involved shall be informed of this absence.

. . .

ARTICLE X -

RULES GOVERNING COLLECTIVE BARGAINING AND THIS AGREEMENT

. . .

10.1.4 With regard to matters not covered by this agreement which are proper subjects for collective bargaining in that they relate to salaries, hours or other conditions of employment, the Board agrees that it will make no changes in existing rules and regulations for the duration of this agreement without prior consultation and negotiation with the Union.

Issue

At hearing the Union proposed that the issue be framed as follows:

> Did the Employer violate the terms of the collective bargaining agreement when it scheduled high school faculty meetings during the teachers' preparation periods?
>
> If so, what is the appropriate remedy?

The District proposed that the issue be framed as follows:

> Has the District violated the collective bargaining agreement by scheduling small group faculty meetings during the teachers' non-scheduled time during the regular work day?
>
> If so, what is the appropriate remedy?

The parties stipulated that the Arbitrator could frame the issue in the Award. I frame the issue as follows:

> Did the District violate the terms of the collective bargaining agreement when it scheduled high school faculty meetings during the student day?
>
> If so, what is the appropriate remedy?

Position of the Parties

The Union argues that in the absence of direct language bearing on the issue, the District's imposition of requiring faculty meetings during the teachers' preparation time violates the relationship established by the collective bargaining agreement, specifically Article 10.1.4 quoted above; that under said language, all subjects over which there may be collective bargaining must be negotiated before the District can change its rules; that the required meetings during the teachers' preparation period directly affects the number of hours a teacher must work during the days surrounding the faculty meeting, thereby directly affecting the teacher's workload; that the faculty meetings as required by the District affects the teacher's salary; that although the requirement does not affect the amount of salary a teacher receives, it does affect the rate at which he or she is paid; that this fact would be readily apparent if the teacher was an hourly rather than a salaried employe; that requiring an hourly paid employe to work extra hours to earn the same wage would not reduce the total wage but would reduce the hourly wage rate; that this is what has occurred here; that the parties have negotiated over the duties of the teachers and the teachers' preparation time in great detail; and that the unilateral addition of work due to scheduling of faculty meetings during the teachers' preparation period conflicts with these provisions, specifically Section 3/8/4.

The Union also argues that just as the Union and teachers may not unilaterally reduce the duties of a teacher, the District may not unilaterally increase the teachers' duties; that, otherwise, the collective bargaining agreement ceases to determine the duties and rights of both parties and becomes instead the basis for the duties of the teachers only with the District retaining unlimited rights to impose still additional duties; and that in light

of the clear language of Article 10.1.4 and the undisputed facts that the requirement of faculty meetings during preparation time is a "proper subject of collective bargaining" and that Local 1275 has been denied collective bargaining over the District's action, the District's unilateral adoption of the requirement for faculty meetings during preparation time over Local 1275's protest is a clear violation of the collective bargaining agreement. The Union requests that the Arbitrator direct the District to cease requiring faculty meetings during the teachers' preparation period.

The District argues that the authority to schedule small group faculty meetings during the work day is within management's reserved rights; that the issue in this case is whether the District can require its high school teachers to attend faculty meetings during the teacher work day; that while Sections 3.7.6 and 3.7.7 place limits on the amount of student contact the District may require of its high school teachers, the contract places no such limits on management's authority to direct the staff during their non-student contact time or non-scheduled time during the work day; that the right to control and to direct the work of its staff has not been bargained away by the District; that the right to schedule faculty meetings as needed is an inherent management right; that the reserved rights doctrine has been recognized by numerous arbitrators, citing several cases; and that there is no evidence in the record that the District has bargained away its right to schedule faculty meetings during the work day and to require teachers to be in attendance at such meetings.

The District also argues that Section 10.1.4 of the collective bargaining agreement is irrelevant in the instant case; that there is no rule or regulation relating to scheduling faculty meetings; that numerous and various types of meetings are scheduled during the teachers' work day; that even if there had been a rule or regulation, the Union waived its right to negotiate the change; that the first change occurred in early 1991; that the Union did not file a grievance until October 1991; that the Union has still not requested to negotiate regarding the change; that the requirement of attendance at faculty meetings within the teachers' work day is clearly a permissive subject of bargaining, citing several cases; that as such, the District has no duty to negotiate decisions to schedule faculty meetings; that the right to make reasonable changes in an employe's job description is a management right; that the Union's demand is unworkable and absurd; that while Section 3.8.4 permits the teachers to leave the school during their lunch and preparation periods, it does not say that teachers are free to skip meetings scheduled during the work day; and that the Union's remedy is beyond the scope of the Arbitrator's authority. The District requests that the Arbitrator dismiss the grievance in its entirety.

Discussion

The question before this Arbitrator is whether the District violated the collective bargaining agreement when it implemented faculty meetings during the student day without consulting or negotiating with the Union. On brief the Union argues that Sections 3.8.4 and 10.1.4 of the collective bargaining agreement were violated; through out the grievance process, however, the Union raised arguments regarding other Sections of the agreement which, through exhibits and testimony, are part of the record in this case. Therefore, I will deal with each of them.

Section 3.7.2 establishes the school day as 8:00 a.m. to 4:00 p.m. The Union argues that holding staff meetings during the student day (from 8:00 a.m. to 3:30 p.m.) instead of after the student day (from 3:30 to 4:00 p.m.) directly affects the number of hours a teacher must work during the days

surrounding the faculty meeting, thereby directly affecting the teacher's workload.

As I understand one aspect of this issue, on days staff meetings are held during the student day, access to the copy machine after 3:30 p.m. is very difficult. Assuming this is true, I fail to see how this impacts the number of hours a teacher must work; at worst, it may require teachers to reallocate their time to get their copying needs met. Another aspect of this issue, as I understand it, is that time after 3:30 p.m. is not good for preparation as it is not good "think time." While I do not credit this testimony, believing it came in the heat of litigation, such an argument would not support a contractual violation, even if it was true.

The action of the District did not change the school day. Teachers are still at school from 8:00 a.m. to 4:00 p.m. Even if the action of the District causes teachers an increase in work, which I do not believe under this record that it does, said increase would be de minimus at most and not a violation of the agreement. Therefore, I do not find a violation of Section 3.7.2 of the agreement.

In a related argument, the Union argues that the faculty meetings as required by the District affects the teacher's salary in that the teachers are required to work extra hours for the same salary. Even assuming that I was convinced that the District's action added work for the teacher, which I am not, this argument is difficult to accept. The Union asserts that this fact would be readily apparent if the teacher was an hourly rather than a salaried employe. But teachers are not hourly employes, nor are they paid on piece work. Every time the District assigns an additional student to a class, the teacher will have more work. Absent exceeding contractually mandated maximum class sizes, it would not be argued successfully that the teacher should be paid extra for every student in the class, nor for every paper read, for every test graded or for every student's question answered. Teachers are professionals whose workloads are not totally standardized. I find no violation of the salary schedule by the District's actions.

As for Section 3.7.6, this language only specifies the maximum teaching load, which is five contact periods based on a seven period day. Section 3.7.6 does not say anything about how non-teaching time, the other two periods in the seven period day, are used. Section 3.7.6 also defines what a contact period is; it says nothing about and does not define a preparation period, nor does it discuss in any way faculty meetings. For these reasons, I do not find a violation of Section 3.7.6 of the agreement.

While Section 3.7.7 is mentioned in the exhibits, there was no testimony about this Section as to the bargaining history of the language, its meaning or its application to this case. It can be noted, however, that this Section does not mention preparation periods or faculty meetings. Therefore, I find no violation of this Section.

The Union argues that the unilateral addition of work due to scheduling of faculty meetings during the teachers' preparation period conflicts with Section 3/8/4. This Section states that teachers are permitted to leave school during preparation periods. This Section does not define nor does it specify anything about preparation periods. Certainly this Section is not a guarantee of preparation periods; it only states that during such a period, a teacher may leave school. It seems a fair reading of this language to say that if a teacher is not scheduled for a class during a particular period but is scheduled for a meeting, then that particular period is not a preparation period for the teacher that day and, thus, Section 3.8.4 does not apply. Thus, I do not find a violation of this Section.

The Union's main argument is that in the absence of direct language bearing on the issue, the District's imposition of requiring faculty meetings during the school day violates the relationship established by the collective bargaining agreement, specifically Article 10.1.4, which reads as follows:

> 10.1.4 With regard to matters not covered by this agreement which are proper subjects for collective bargaining in that they relate to salaries, hours or other conditions of employment, the Board agrees that it will make no changes in existing rules and regulations for the duration of this agreement without prior consultation and negotiation with the Union.

The Union argues that requiring faculty meetings during the school day is a "proper subject of collective bargaining" and that Local 1275 has been denied collective bargaining over the District's action.

The language of Section 10.1.4 is, in some ways, very specific. This Section does not state that "the Board agrees that it will make no changes for the duration of this agreement without prior consultation and negotiation with the Union." Instead, Section 10.1.4 states that "the Board will make no changes in existing rules and regulations for the duration of this agreement. . .".

The Union asserts that under this language, all subjects over which there may be collective bargaining must be negotiated before the District can change its rules. Yet the Union did not present any rule or regulation which the Board changed. While the requirement that attending faculty meetings during the school day may be a proper subject for collective bargaining, the contractual requirement under Section 10.1.4 for prior consultation and negotiation is limited to "changes in existing rules and regulations." Absent a showing by the Union that a rule or regulation has been changed, the Union is not able to show that it has been denied collective bargaining over the District's action since the District did not change an existing rule or regulation and, thus, the Union had no right to bargain over the change. Therefore, this Arbitrator does not find a violation of Section 10.1.4.

Finally, the Union argues that the District may not unilaterally increase the teachers' duties. As noted above, I find no increase in the duties of teachers, only a change in time when certain duties occur. Prior to 1991, teachers met in staff meetings from 3:30 to 4:00 p.m. once a month. Now every other month, instead of meeting at that time, teachers meet in staff meetings from 8:25 to 8:55 a.m. or some other 30 minute block during the student day. Same amount of time, just a different time of day to meet.

Therefore, I do not agree with the Union that the District's unilateral adoption of the requirement for faculty meetings during preparation time over Local 1275's protest is a clear violation of the collective bargaining agreement. Because of that, I will not grant the Union's request that the District be directed to cease requiring faculty meetings during the teachers' preparation period. Indeed, I will grant the District's request to dismiss this grievance in its entirety.

What is unfortunate about this case is that it will not foster better relations between the parties, nor will it improve communication. There is a certain irony in that. The high school principal, with apparent good intentions of improving communication between the faculty and himself, instituted the small staff meetings during the student day. But he did so

without communication with the faculty on this issue, the very group with whom he wants to improve communication. It seems to this Arbitrator that it is difficult to begin the process of communicating without involving the party with whom you wish to communicate. While his action did not violate the collective bargaining agreement, it violated his stated purpose: to foster better communication. Perhaps a topic of the next faculty meeting should be how administration and faculty can work together to improve communication. I know the faculty will say that they need to be included in the process. If the administration agrees, perhaps some effective communication can then occur on an on-going basis.

In any case, while the action of the District may not have fostered and may, indeed, have hindered communication between the parties, it did not violate the collective bargaining agreement. Therefore, for the reasons stated above, the Arbitrator issues the following

AWARD

1. That the District did not violate the terms of the collective bargaining agreement when it scheduled high school faculty meetings during the student day.

2. That the grievance is hereby denied and dismissed.

Dated at Madison, Wisconsin, this 27th day of October, 1992.

By _____
James W. Engmann, Arbitrator

JWE/sh
H3444H.12